



# Bankruptcy Amendment Regulations 2007 (No. 2)<sup>1</sup>

**Select Legislative Instrument 2007 No. 138**

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I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Bankruptcy Act 1966*.

Dated 7 June 2007

P. M. JEFFERY  
Governor-General

By His Excellency's Command

PHILIP RUDDOCK  
Attorney-General

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**1 Name of Regulations**

These Regulations are the *Bankruptcy Amendment Regulations 2007 (No. 2)*.

**2 Commencement**

These Regulations commence as follows:

- (a) on the day after they are registered — regulations 1 to 4 and Schedule 1;
- (b) on 1 July 2007 — Schedule 2.

**3 Amendment of *Bankruptcy Regulations 1996***

Schedules 1 and 2 amend the *Bankruptcy Regulations 1996*.

**4 Transitional**

Despite the repeal by these Regulations of regulations 9.01 to 9.07 and Schedule 5 of the *Bankruptcy Regulations 1996*, those regulations and Schedule continue to have effect in relation to a debt agreement made as a result of the acceptance of a debt agreement proposal given to the Official Receiver before 1 July 2007.

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## **Schedule 1      Amendments commencing on day after registration**

(regulation 3)

### **[1]      After regulation 9.07**

*insert*

### **9.08      Qualifications of applicants**

For paragraph 186C (2) (e) of the Act, the following qualifications are prescribed after 30 June 2009:

- (a) a Certificate IV in Financial Services (Accounting) from an Australian college of advanced education;
- (b) a degree, diploma or similar qualification from an Australian university or college of advanced education, or other Australian tertiary institution, of an equivalent or higher level to the qualification mentioned in paragraph (a).

**[2] Schedule 8, items 21 and 22***substitute*

21	Part IX debt agreement proposal	debt agreement proposal, explanatory statement and statement of affairs	debtor	not applicable	<ul style="list-style-type: none"> <li>• date that acceptance of proposal for processing and name and address of debt agreement processor are entered in the Index</li> <li>• particulars of debtor</li> <li>• particulars of whether proposal accepted or rejected following processing</li> <li>• date that a proposal lapses (if at all)</li> <li>• date of withdrawal or cancellation of proposal</li> </ul>
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22	Part IX debt agreements	debt agreement  notification of completion or termination of the debt agreement  notification of a designated 6-month arrears default	notification of completion: the debt agreement administrator  notification of 6-month arrears default: the debt agreement administrator	notification of completion: 5 working days after end of debt agreement  notification of 6-month arrears default: 10 working days after occurrence of designated 6-month arrears default	<ul style="list-style-type: none"> <li>• particulars of debtor (if different from particulars in debt agreement proposal)</li> <li>• date that making of debt agreement entered in the Index</li> <li>• date at end or termination of debt agreement</li> <li>• particulars of reason for debt agreement termination or end</li> </ul>
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**[3] Schedule 8, after item 23***insert*

23A	Section 186B  Application for registration as a debt agreement administrator	application	Inspector-Ge neral	not applicable	<ul style="list-style-type: none"> <li>• date of application</li> <li>• particulars of applicant</li> </ul>
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23B	Section 186D  Registration as a debt agreement administrator	application approval or refusal of registration application under section 186C (including any conditions specified for subsection 186C (9)).	Inspector-General	not applicable	<ul style="list-style-type: none"> <li>• particulars of applicant</li> <li>• details of the approval or refusal (including specified conditions applying to the debt agreement administrator on registration)</li> </ul>
23C	Section 186F  Conditions of registration	notice of imposition of conditions	Inspector-General	not applicable	<ul style="list-style-type: none"> <li>• particulars of conditions imposed on debt agreement administrator's registration</li> </ul>
23D	Sections 186J, 186K and 186L  Debt agreement administrator registration ceases	approval of registration  notice of request to accept surrender of registration (section 186J)  notice of cancellation of registration (section 186K or 186L)	Inspector-General	not applicable	<ul style="list-style-type: none"> <li>• date debt agreement administrator registration ceases</li> <li>• particulars of reason for end of registration</li> </ul>

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## Schedule 2      Amendments commencing on 1 July 2007

(regulation 3)

**[1]      Subregulation 4.11 (1)**

*omit*

, 57 (3A) and 185E (1)

*substitute*

and 57 (3A)

**[2]      Paragraph 4.11 (1) (e)**

*substitute*

(e) a statement that it is an act of bankruptcy for a debtor to present to the Official Receiver, under section 54A of the Act, a declaration of intention to present a debtor's petition.

**[3]      Subregulation 4.11 (3)**

*substitute*

(3) The Official Receiver must not accept a debtor's petition under section 55, 56B or 57 of the Act unless the debtor has given to the Official Receiver a signed acknowledgement (which may be included in or appended to the petition) that the debtor has received and read the prescribed information.

**[4]      Part 6, Division 3**

*omit*

**[5]      Regulations 9.01 to 9.07**

*omit*

**[6] Regulation 9.08**

*renumber as regulation 9.02*

**[7] Before regulation 9.02**

*insert*

**9.01 Prescribed information to be supplied to the debtor**

- (1) For paragraph 185C (2D) (b) and subsection 185E (1) of the Act, the following information is prescribed:
  - (a) information about alternatives to entering into a debt agreement;
  - (b) information about the consequences of making a debt agreement proposal;
  - (c) information about sources of financial advice and guidance to persons facing or contemplating entering into a debt agreement;
  - (d) a statement that it is an act of bankruptcy for a debtor to give to the Official Receiver a debt agreement proposal.
- (2) The information must be factual and objective.
- (3) The Official Receiver must not accept a debtor's debt agreement proposal under Division 2 of Part IX of the Act, unless the debtor has given to the Official Receiver a signed acknowledgment that the debtor has received and read the prescribed information.
- (4) If the debtor presents a debt agreement proposal without having given the acknowledgement, the Official Receiver must:
  - (a) if the debtor presents the debt agreement proposal in person — give the prescribed information to the debtor; or
  - (b) if the debtor presents the debt agreement proposal by post — post the prescribed information to the debtor.



- (5) Subject to subregulation (6), a debt agreement proposal and acknowledgement may be signed by a person for a debtor intending to present a debt agreement proposal if the debtor is unable to properly read the debt agreement proposal, prescribed information and acknowledgement ('the relevant material') because he or she is:
- (a) blind, partially sighted, illiterate or partially literate; or
  - (b) insufficiently familiar with the English language.
- (6) A person who signs a debt agreement proposal and acknowledgement for a debtor, must sign a statement:
- (a) where paragraph (5) (a) applies — that he or she has carefully read the relevant material to the debtor; or
  - (b) where paragraph (5) (b) applies — that he or she has carefully interpreted the relevant material to the debtor in a language with which both are familiar.

**[8] Regulation 15A.01, after definition of *penalty***

*insert*

*trustee* includes a debt agreement administrator.

**[9] Schedule 5**

*omit*

**[10] Schedule 8, item 23D***substitute*

23D	Sections 185ZCA, 186J, 186K and 186L  Debt agreement administrator registration ceases	approval of registration  notice of request to accept surrender of registration (section 186J)  notice of cancellation of registration (section 186K or 186L)	Inspector-General	not applicable	<ul style="list-style-type: none"> <li>• date debt agreement administrator registration ceases</li> <li>• particulars of reason for end of registration</li> </ul>
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**Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See [www.frli.gov.au](http://www.frli.gov.au).